

**INFORMATION  
DISCLOSURE  
STATEMENT**

|                |                    |
|----------------|--------------------|
| Application #  | 10/568,069         |
| Confirmation # | 7458               |
| Filing Date    | February 13, 2006  |
| First Inventor | HAYES-PANKHURST    |
| Art Unit       | 1797               |
| Examiner       | Bushey, Charles S. |
| Docket #       | P08796US00/DEJ     |

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

SIR:

**This IDS is submitted pursuant to 37 CFR. §1.97-1.98 and includes the following:**

- A **listing** of the references on PTO-1449.
- A copy of all **non-US** references which are listed on the PTO-1449 (US refs not required).
- A copy of a corresponding EPO **Examination Report**. This report discusses reference "D1", which is "D1 WO 03/028775" cited in the PCT Written Opinion which opinion is part of the corresponding EP national stage application (and part of the present US application as well). This reference was submitted with applicant's previous IDS, and it is also equivalent to USP 7,344,123 cited by the examiner in the Office Action of November 7, 2008.

**Please note the following particulars concerning the filing of this IDS:**

- 1. This IDS is filed at whichever is the latest of:
  - within three months of the filing date of a NATIONAL APPLICATION other than a CPA, or
  - within three months of the date of entry into the NATIONAL STAGE as set forth in 37 CFR. §1.491 in an international application, or
  - before the mailing date of a first Office Action on the merits or after filing of an RCE (*but if a first Office Action is mailed but not yet received and the date on the face of the attached foreign communication makes it evident that this IDS is submitted within three months from the mailing of the search report, then applicant is entitled to have this IDS considered under 2.B. below and such boxes should be considered as having been checked*).
- 2. This IDS is filed after a first Office Action, but before a Final Action, Allowance, or any other action which closes prosecution, and:
  - A. Is accompanied by a payment in the amount of \$180.00 required by 37 CFR. §1.17(p).
  - or**
  - B. I hereby state that each item of information contained in this IDS was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.
  - C. I hereby state that no item of information in this IDS herewith was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making reasonable inquiry, was known to any individual designated in 37 CFR. §1.56(c) more than 3 months prior to the filing of this IDS.
  - D. An appropriate Statement is attached.

**3.** This IDS is filed **after** a final action or allowance, but on/before payment of the issue fee, and:

A. is accompanied by a payment in the amount of \$180.00 required by 37 CFR. §1.17(p).

and

B. I hereby state that each item of information contained in this IDS was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.

C. I hereby state that no item of information in this IDS herewith was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making reasonable inquiry, was known to any individual designated in 37 CFR. §1.56(c) more than 3 months prior to the filing of this IDS.

D. An appropriate Statement is attached.

**4.** This IDS does not comply with 37 CFR 1.97-1.98, and is being filed **for placement in the file** pursuant to 37 CFR. §1.97(i). .

**5.** It will also be appreciated that:

a. It is believed that this IDS complies fully with 37 CFR 1.56 and 1.97-98 and with MPEP § 609; but if for some reason it does not and will not be entered, the examiner is requested to telephone the undersigned so that any deficiency can be timely remedied.

b. Some of the documents may have markings thereon, but no significance should be attached to those markings.

c. These documents are not necessarily analogous art.

d. Where an English language translation of an abstract is provided from a public source, applicant cannot vouch for the accuracy of that translation.

**6.** If no payment is enclosed and a fee is due in connection with this communication or if the payment enclosed is insufficient, the Director is authorized to charge any fee or additional fee due with this communication to Deposit Account No. 12-0555.

Respectfully submitted,

Date: May 7, 2009

/Douglas E. Jackson/

By: Douglas E. Jackson

Registration No.: 28,518

**STITES & HARBISON PLLC** ♦ 1199 North Fairfax St. ♦ Suite 900 ♦ Alexandria, VA 22314  
TEL: 703-739-4900 ♦ FAX: 703-739-9577 ♦ CUSTOMER No. 00881



Europäisches  
Patentamt  
European  
Patent Office  
Office européen  
des brevets

European Patent Office  
80298 MUNICH  
GERMANY  
Tel: +49 89 2399 0  
Fax: +49 89 2399 4465



Knott, Stephen Gilbert  
MATHISEN, MACARA & CO.  
The Coach House  
6-8 Swakeleys Road  
Ickenham  
Uxbridge UB10 8BZ  
ROYAUME-UNI

**Formalities Officer**  
Name: Gamboa Susín, Bruno  
Tel: +49 89 2399 - 6086  
or call  
+31 (0)70 340 45 00

**Substantive Examiner**  
Name: Acerbis, Giorgio  
Tel: +49 89 2399 - 6895

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|--|--------------------|--------------------|
| Application No.<br>04 729 669.4 - 2313 | Ref.<br>2/E32667EP | Date<br>18.08.2008 |
| Applicant<br>Carbonate Limited         |                    |                    |

### Communication pursuant to Article 94(3) EPC

The examination of the above-identified application has revealed that it does not meet the requirements of the European Patent Convention for the reasons enclosed herewith. If the deficiencies indicated are not rectified the application may be refused pursuant to Article 97(2) EPC.

You are invited to file your observations and insofar as the deficiencies are such as to be rectifiable, to correct the indicated deficiencies within a period

of 4 months

from the notification of this communication, this period being computed in accordance with Rules 126(2) and 131(2) and (4) EPC. One set of amendments to the description, claims and drawings is to be filed within the said period on separate sheets (R. 50(1) EPC).

**Failure to comply with this invitation in due time will result in the application being deemed to be withdrawn (Art. 94(4) EPC).**



Acerbis, Giorgio  
Primary Examiner  
For the Examining Division

Enclosure(s): 3 page/s reasons (Form 2906)

The examination is being carried out on the **following application documents**:

**Description, Pages**

2-12 as published  
1, 1a filed with telefax on 10.08.2006

**Claims, Numbers**

8-24 as published  
1-7 filed with telefax on 10.08.2006

**Drawings, Sheets**

1/4-4/4 as published

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- 1 In the letter of reply dated 10.08.2006 the applicant has amended independent claim 1 by adding that the fan is motor driven and that control means are provided for actuating the actuator, moreover the fact that the flow controller is movable by an actuator has been moved into the characterizing portion.
- 2 The applicant states that in his opinion the subject matter of claim 1 is novel over D1 because D1 does not disclose the use of an actuator to move the flow controller.

**ADDED SUBJECT MATTER - Art 123(2) EPC**

- 1 The amendment concerning the control means adds subject matter for the following reasons: In the original description (page 5 line 10 to page 6 line 19; and claim 5) the control means was presented as a control means for controlling the actuator **and the fan**. The fact that the control means controls both actuator and fan is considered to be essential for the functioning of the device, therefore the exclusion of the fan contravenes Art 123(2) EPC (see also the guidelines C-VI, 5.3.10).

**PATENTABILITY - Art 52(1) EPC**

- 1 Even if claim 1 would be amended by incorporating the feature of the fan, in order to

overcome the objection under Art 123(2) EPC; the subject matter of claim 1 is still considered to be not novel over D1 for the following reasons:

- 2 D1 disclose all the features of the preamble of claim 1 (see official letter dated 24.02.2006, as far as it concerns the actuator and the control means the attention of the applicant is drawn to the following points:
  - 2.1 D1 uses an actuator (the clutch) in order to move from one position to the other the shutter (69); through the whole description (see for instance page 19 lines 11-14, page 22 line 19 to page 23 line 3) it is disclosed that the shutter can be moved not only manually but also electronically (and therefore an actuator has to be used), therefore the use of an actuator to move the flow controller between two positions (actuated by a control means) is considered to be implicitly disclosed; the control means is also explicitly disclosed in claim 15. In particular the combination of claims 1+2+3+4+5+6+12+14+15 of D1 discloses the subject matter of present claim 1.

## SUGGESTIONS

- 1 As set out in the previous paragraphs the use of an actuator is considered to be not novel over D1, and for how the device of D1 is functioning also some clarification of the actuator by adding functional features would not be considered inventive. What can be seen as differentiating from D1 is the shape of the flow controller i.e. the extensions which are used to provide a continuation of the passage. Therefore a new independent claim which comprises the features of original claim 8 (as already suggested in the PCT procedure) would lead to an allowable independent claim.

## FURTHER PROCESSING

- 1 In view of further proceedings the attention of the applicant is drawn to the following points:
  - 1.1 The applicant is requested to only file new claims which clearly overcome the objection raised.

- 1.2 In amending the present independent claims for distinguishing from the prior art, the applicant is requested to identify clearly all amendments made, and indicate on which passages of the original application these amendments are based (Article 123(2) EPC; see also Guidelines E-II, 1).
- 1.3 If it proves impossible for the applicant to overcome the objection raised by amendments the examining division will consider refusal under Article 97 (1) EPC. The applicant's attention is drawn to the possibility of requesting a decision according to the state of the file (guidelines E-X, 4.4). Such a request would result in a speedy, yet appealable decision. When requesting a decision according to the state of the file, the request for oral proceedings must be withdrawn.

Giorgio Acerbis